IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 594 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SECRETARY & 1 - Petitioner(s)
Versus
PRAVINCHANDRA MANISHANKAR THAKAR - Respondent(s)

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Appearance :
MR KP RAWAL, AGP for Petitioner(s) : 1 - 2.
MR HRIDAY BUCH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 23/01/2007

ORAL JUDGMENT

By filing this petition under Article 227 of the Constitution of India, the petitioners have prayed to issue a writ of certiorari or any other writ, direction or order to quash and set aside the

judgment and order dated 31st March, 2005 passed by learned Joint District Judge, Amreli in Civil Miscellaneous Appeal No.36 of 2003.

2. It is the case of the petitioners that the respondent was appointed as a Medical Officer on 2nd February, 1979 in the Department of petitioner no.1 and was performing his duty at village Bhesan, District Jamnagar. Thereafter, he was transferred to Bhanvad, District Jamnagar on 21st February, 1997. However, the respondent did not resume at Bhanvad and proceeded on leave without prior sanction of the leave. Thereafter, he was transferred at Dhari, District Amreli where he resumed his duty and forwarded leave report for medical leave from 24th February, 1997 to 15th August, 1997. The said leave application was rejected by the petitioner no.2 and, therefore, the respondent filed a Regular Civil Suit No.110 of 1999 in the Court of Civil Judge (S.D.), Amreli wherein the relief of declaration and permanent injunction was sought against the petitioners. The learned Civil Judge (S.D.), Amreli decreed the suit by his judgment dated 28th March, 2003 against which the present petitioners filed an appeal before the District Court at Amreli with an application for condonation of delay being Civil Miscellaneous Appeal No.36 of 2003 contending that delay of 157 days has been caused on account of procedural delay i.e. time consumed in exchange of correspondence with Legal Department. However, the said application came to be rejected by the District

Court by judgment and order dated 31st March, 2005 and, therefore, the present petition.

3. Heard learned AGP Mr. Rawal for the petitioners and learned advocate Mr. Buch for the respondent and perused the impugned order.

4. The case of the petitioners is that on account of procedural delay, the delay of 157 days has been caused. It appears from the averments made in the application for condonation of delay that after the judgment was rendered by the Trial Court, the certified copy of the judgment is required to be sent to the Legal Department for an opinion and thereafter, the Legal Department is required to consult the concerned Department and obtain necessary information with regard to the proceedings and thereafter decide about further proceedings. It also appears that the concerned Department sent its report to the Legal Department on 23rd July, 2003 (There appears to be a typographical error. It should be read as 23rd June, 2003) and thereafter, the Legal Department, after following necessary procedure, decided to file an appeal and informed the petitioners on 30th June, 2003. However, as the certified copies of the judgment and decree were required to be obtained from the concerned Department, the appeal could not be preferred within the prescribed period of limitation. It appears that the delay is caused in following the necessary procedure for preferring an appeal.

4.1 It is quite a known fact that in the Government, the concerned Department is required to take assistance of different officers and Departments to pursue legal proceedings. Therefore, there may be delay in communication. Looking to the explanation offered by the petitioners, in my view, the delay is not an inordinate delay which would seriously affect the rights of the respondent. It is also settled principle of law that the matters have to be decided on their own merits and should not be thrown away on technical grounds. In the judgment of **STATE OF HARYANA vs. CHANDRA MANI AND OTHERS** reported in (1996) 3 SCC 132, the Hon'ble Supreme Court, while condoning delay in filing appeal, held that delay should be considered with pragmatism in justice-oriented manner and certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic set-up involving red-tapism. The Supreme Court, in the said case, condoned the delay of 109 days in filing the Letters Patent Appeal before the High Court. In the present case, in my view, considering the averments made in the application for condonation of delay, the delay of 157 days has been duly explained and sufficient cause has been shown for the delay. Therefore, this is a fit case for condonation of delay and the learned Joint District Judge committed an error in not condoning the delay in preferring the appeal before it. Therefore, the impugned order is required to be set aside.

5. In view of the above, the petition succeeds. The order dated 31st March, 2005 passed by Joint District Judge, Amreli in Civil Miscellaneous Appeal No.36 of 2003 is set aside. The delay caused in preferring the appeal is condoned. Rule made absolute accordingly. In peculiar facts and circumstances of the case, there shall be no order as to costs. The learned District Judge shall proceed with the appeal in accordance with law.

(Bankim N. Mehta, J.)

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